

BEFORE LINDA McCULLOCH, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

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| CARTER COUNTY HIGH SCHOOL DIST. |) | OSPI No. 297-04 |
| |) | |
| Appellant, |) | |
| |) | |
| vs. |) | DECISION AND ORDER |
| |) | |
| GENE and TERESA WALKER, |) | |
| |) | |
| Respondent. |) | |

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Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following Decision and Order.

DECISION AND ORDER

The State Superintendent affirms the validity of the Carter County Transportation Committee's actions in designating isolation status on the Walker Individual Transportation Contract and approving room and board for Jessica Walker to attend school in Belle Fourche, South Dakota which was done on July 31, 2003 and confirmed on April 19, 2004. The Carter County High School District is hereby ordered to pay transportation, including room and board, for Jessica Walker to attend school in Belle Fourche, South Dakota for the 2003-04 school year.

PROCEDURAL AND FACTUAL HISTORY

This is an appeal by the Carter County High School District (hereinafter "District") of the April 19, 2004 decision of the Carter County Transportation Committee (hereinafter "Committee")

regarding the transportation contract between Teresa Walker and the District for Jessica Walker (hereinafter “Walkers”) .

On July 21, 2003 the Walkers and the District entered into a Student Attendance Agreement for the 2003-04 school year for Jessica Walker. The attendance agreement stated that the District would provide transportation and tuition costs for the student to attend school in Belle Fourche, South Dakota. Also on July 21, 2003 the Walkers and the District entered into an Individual Transportation Contract providing for payment of transportation costs incurred for Jessica Walker to attend school in Belle Fourche, South Dakota.

On July 31, 2003 the Committee approved isolation status and room and board for Jessica Walker.

On or about March 11, 2004 Walkers received a check from the District for \$54.60 which was determined to be for transportation costs to the nearest bus stop which the District determined to be the bus to Hulett, Wyoming.

On April 6, 2004 Teresa Walker met with the District board of trustees at a special meeting. Both a motion to approve and a motion to disapprove room and board for Jessica were made and both voted down. The matter was tabled.

On April 12, 2004 the District board of trustees met and motions to approve room and board for Jessica were defeated.

On April 19, 2004 the Committee held a special meeting and approved room and board and tuition for Jessica for the 2003-04 school year.

The April 19, 2004 decision of the Carter County Transportation Committee approving room and board and tuition for Jessica Walker is the subject of this appeal.

ISSUES ON APPEAL

1. Did the Carter County Transportation Committee have jurisdiction to approve room and board for Jessica Walker?
2. Are the Walkers entitled to reimbursement for room and board for Jessica Walker under their individual transportation contract with the District?

STANDARD OF REVIEW

This is a review of a county transportation committee decision pursuant to Mont. Code Ann. §20-3-107(1)(b). The State Superintendent applies the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. §2-4-704 and adopted by the State Superintendent in Admin. R. Mont. 10.6.125. The State Superintendent may reverse or modify a county transportation committee's decision if substantial rights of the appellant have been prejudiced because the decision is (a) in violation of constitutional or statutory provisions; (b) in excess of the committee's statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. Admin. R. Mont. 10.6.125(4). *Hedges v. The Lake County Transportation Committee*, OSPI 219-33 (1993).

FINDINGS OF FACT

1. On July 21, 2003 the Walkers submitted a Student Attendance Agreement to the District for the 2003-04 school year requesting that their daughter be allowed to attend school in

Belle Fourche, South Dakota. The attendance agreement stated that the District would provide transportation and tuition costs. Dane Castleberry, Chairman of the District signed the Agreement on behalf of the district of residence and acknowledged that the attendance agreement was mandatory and agreed to pay tuition and over-schedule transportation costs. (Walkers' Exhibit 1)

2. Also on July 21, 2003 Walkers submitted an Individual Transportation Contract to the District and the Alzada Elementary District for transportation for their daughters Sidney (grade 8) and Jessica (grade 9) to attend school in Belle Fourche, South Dakota. The contract stated that Walkers were applying for isolation status for both semesters and that the distance from their home to the nearest school (one way) was 45 miles. The distance from home to the nearest bus stop was marked "0". In the box for isolation status it is indicated that the District did not approve isolation status and is initialed "DC". This contract is signed by Rita Hendrickson as Chair for the Alzada Elementary School District and by Dane Castleberry for the District and dated July 21, 2003. (Walkers' Exhibit 2) [Note: The District has also submitted a copy of the Individual Transportation Contract however, this contract had been altered by crossing out "0" and inserting "5" in the space requesting the number of miles from home to the nearest bus stop. This amendment is not initialed by any of the parties to the contract. The contract submitted by the Walkers is an accurate copy of the document on file with the Office of Public Instruction.]

3. On July 31, 2003 the Carter County Transportation Committee met to "finalize the remaining transportation contracts". Dane Castleberry, Chairman of the District board of trustees is a member of the Committee and was present at this meeting. Isolation status for Jessica and Sydney Walker was approved by the Committee as evidenced by a check mark in the "yes" column and the initials of Carole Carey, Chair of the Carter County Transportation Committee on the Individual Transportation Contract. A motion was made to approve room and board for Sidney and Jessica

Walker to attend school in Belle Fourche, South Dakota. Dane Castleberry seconded this motion and the motion carried. (Committee minutes for 7/31/03)

4. On or about March 11, 2004 Walkers received a check from the District for \$54.60 which they determined from the District's clerk to be for transportation costs to the nearest bus stop which is the bus to Hulett, Wyoming. The County Superintendent discovered that an amended contract had not been submitted following the Committee's approval of isolation and room and board on July 31, 2003. Walkers submitted an amended Contract to the District requesting room and board for both daughters. (Committee minutes for 4/19/04 – Fact # 5 & 6)

5. On April 6, 2004 Teresa Walker met with the District board of trustees at a special meeting. Both a motion to approve and a motion to disapprove room and board for Jessica were made and both voted down. The matter was tabled. (Committee minutes for 4/19/04 – Fact #7)

6. On April 12, 2004 the District board of trustees met and motions to approve room and board for Jessica were defeated. (Committee minutes for 4/19/04 – Fact #10)

7. On April 19, 2004 the Committee held a special meeting called by Carole Carey, County Superintendent and Chair of the Committee. Fact finding had been conducted by Carole Carey and was read to the Committee. The Committee approved the fact finding with one correction to Item 10. The facts are stated in the minutes of the April 19, 2004 meeting. Noralla Thomas represented the District on the Committee at this meeting. Following considerable discussion, a motion was made by Noralla Thomas to pay room and board and tuition for Jessica Walker for the 2003-04 school year to Belle Fourche, South Dakota. The motion unanimously carried. (Transcript of hearing, pp 7-8)

CONCLUSIONS OF LAW

ISSUE No. 1

Did the Carter County Transportation Committee have jurisdiction to approve room and board for Jessica Walker?

The District contends that Walkers effectively filed an appeal of the District's April 12, 2004 decision with the Committee and therefore pursuant to ARM Title 10, Chapter 6 this matter constitutes a school controversy that must be determined pursuant to the procedural requirements of those rules. The District then contends that the Walkers did not properly file their appeal and that the Committee failed to follow the procedural requirements contained in Title 10, Chapter 6 and therefore the Committee did not have jurisdiction to hear the "appeal".

The State Superintendent has reviewed the record submitted by the Chairman of the Committee and agrees that Walkers have not filed a notice of appeal nor is there any mention in the record that an appeal of the District's decision was filed. However, the State Superintendent concludes that the Committee's consideration of the Walker amended contract was not an appeal of the board's decision. The Committee was responding to its statutory duty to approve, disapprove or adjust transportation applications. In fact, the minutes of the April 19, 2004 meeting specifically state that the meeting was a special meeting called by the Chairman. The special meeting was called for the purpose of addressing the issue of room and board for Jessica Walker. It was not a school controversy hearing as contemplated by Title 10, Chapter 6 and therefore the procedural requirements contained therein do not apply.

That being said, a thorough review of the record in this matter leads the State Superintendent to the conclusion that the actions of Walkers in returning this matter to the District in April of 2004 and the Committee's actions in again approving isolation and room and

board for Jessica Walker were unnecessary. These actions had already occurred in July of 2003 when the District entered into the Student Attendance Agreement and Individual Transportation Contract with Walkers and the Committee approved the contract and isolation status. What did not occur was the completion and submission by the Committee of an Amended Individual Transportation Contract which provided for room and board as approved by the Committee on July 31, 2003. This Amended Contract did not require the approval of the District. Mont. Code Ann. section 20-10-142 (3) and (5) specifically provides that “regardless of the action of the trustees and when approval is given by the committee and the superintendent of public instruction, the trustees shall pay transportation because of isolation.” Mont. Code Ann. Section 20-10-121(3) further states that transportation can be provided by paying the parent to transport the child or paying board and room reimbursements.

The Carter County Transportation Committee is required by law to “approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation because of isolated conditions of the eligible transportee’s residence;” 20-10-132(1)(c), MCA. The Committee approved isolation status for Jessica when Carol Carey, Chairman of the Committee marked and initialed the box indicating County approval on the Individual Transportation Contract on July 31, 2003. Further it is apparent from the minutes of the July 31, 2003 Committee meeting that they also adjusted the application by granting Walkers’ request for room and board. Although the minutes do not contain the entire discussion relating to isolation and approval of room and board reimbursement, we can only presume from the actions of the Committee that they considered the location of the Walkers' home, the condition of the roads and the distance to the school in Belle Fourche.

The District is required to provide transportation pursuant to 20-10-121, MCA. “The

trustees of any district may furnish transportation to an eligible transportee who ... has been granted permission to attend a school outside of the district. ... The trustees shall furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction.” The District granted Jessica permission to attend the Belle Fourche school by approving the Student Attendance Agreement and agreeing that they would pay for tuition and transportation. The trustees were further directed to provide transportation in the form of room and board because of isolation status by the county transportation committee and the state superintendent hereby approves that determination.

By signing the Individual Transportation Contract, the District agreed to pay transportation costs for Jessica to attend school in Belle Fourche. The mileage was agreed to be 45 miles one way. The District thereafter unilaterally altered their copy of the contract to limit the mileage to 5 miles which was the distance from the Walkers’ residence to the bus stop for the Hulett, Wyoming bus. The mileage for which a District is required to pay for transportation is governed by 20-10-142, MCA and in cases where there is no Individual Transportation Contract to the contrary, by ARM 10.7.106(2)(c).

In situations where the district has contracted to pay mileage to the student's school of attendance, the provisions of 20-10-142, MCA apply. "When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian for actual miles transported...". (Emphasis added) In this case the actual miles transported are from the Walker residence to the school in Belle Fourche, South Dakota (because the Hulett bus doesn't travel to Belle Fourche).

ARM 10.7.106(2)(c) provides that, “unless a student is attending school under the mandatory provisions of 20-5-321(1)(d) or (e), or under an individual education plan (IEP), the

distance from the home to the nearest operating school or bus stop will be used to calculate the reimbursement under a pupil transportation contract. *** (ii) The nearest bus stop for the purposes of (c) is the nearest bus stop where the student could board a bus to the elementary or high school offering educational services appropriate for the grade level of the student that the student could reasonably attend, regardless of whether the bus stop is provided by the district of attendance or the district of residence." ARM 10.7.106(2)(c) (Emphasis added) Jessica Walker's district of residence is the Carter County High School district and her agreed upon district of attendance is in Belle Fourche, South Dakota. Obviously, the Hulett bus stop is maintained by neither Jessica's district of residence nor her district of attendance, therefore, a discussion of the mileage to the Hulett bus stop is irrelevant.

The State Superintendent concludes that the Carter County Transportation Committee did have jurisdiction to approve room and board for Jessica Walker and that the mileage calculation of 45 miles one way to Belle Fourche is the correct mileage in this instance.

ISSUE No. 2

Are the Walkers entitled to reimbursement for room and board for Jessica Walker under their individual transportation contract with the District?

The Walkers entered into two legally binding agreements with the District, i.e. the Out of District Attendance Agreement and Individual Transportation Contract. These agreements provided that the Jessica Walker would attend school in Belle Fourche, South Dakota and that the District would pay transportation costs. The Committee approved the Individual Transportation contract, including isolation status and adjusted the contract by requiring the payment of room and board. These actions were within the Committee's jurisdiction under 20-

10-142(3), MCA. The District did not appeal this decision of the Committee within the time allowed by law and therefore the Walkers' had a right to rely on the terms of the Individual Transportation Contract as approved and adjusted by the Committee.

The State Superintendent concludes that the Walkers are entitled to reimbursement for mileage and room and board for Jessica Walker as stated in the Individual Transportation contract entered into by the parties on July 21, 2003 and approved/adjusted by the Committee on July 31, 2003.

DECISION AND ORDER

The State Superintendent affirms the validity of the Carter County Transportation Committee's actions in designating isolation status on the Walker Individual Transportation Contract and approving room and board for Jessica Walker to attend school in Belle Fourche, South Dakota which was done on July 31, 2003 and confirmed on April 19, 2004. The appropriate mileage is the mileage from the Walkers' home to the school in Belle Fourche, South Dakota, which has been determined to be 45 miles one way. The Carter County High School District is hereby ordered to pay transportation, including room and board, for Jessica Walker to attend school in Belle Fourche, South Dakota for the 2003-04 school year.

DATED this 18th day of October, 2004.

/s/ Linda McCulloch
Linda McCulloch,
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 18th day of October, 2004, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

Tony C. Koenig
Montana School Boards Assoc.
One South Montana
Helena, MT 59601

Gene and Teresa Walker
PO Box 10
Alzada, MT 59311

Carole Carey
Carter County Transportation Committee
PO Box 322
Ekalaka, MT 59324

/s/ Catherine K. Warhank
Catherine K. Warhank, Chief Legal Counsel